
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

ASBERRY BARRY POSTELL,

Plaintiff,

*versus*UNIT DOCTOR, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:17-CV-12

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff, Asberry Barry Postell, an inmate formerly confined at the Mark Stiles Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against several defendants.¹

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends granting the Motion for Summary Judgment filed by defendants Barber and Gildner for failure to exhaust administrative remedies (docket entry no. 149). In addition, the Magistrate Judge entered an order requiring plaintiff to file an amended complaint identifying the remaining unknown medical and kitchen staff defendants and/or inform the court

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Plaintiff's claims against defendants Breaux, Johnson, Brown, Stewart, Villalobos, Watson and Woodward were severed into a separate civil rights action on March 2, 2020 (docket entry no. 112). The following claims were dismissed on April 7, 2020: all official capacity claims, individual capacity claims against defendant Collier for lack of personal involvement, individual capacity claims against defendants Brewer, Lee, Barber, Montgomery, and Massie for failure to properly investigate and respond to grievances, individual capacity claims against unknown defendants for verbal threats and harassment and individual capacity claims against defendant Ekeke for lost and damaged property without due process of law (docket entry no. 123).

as to whether he wished to voluntarily dismiss his claims against those defendants (docket entry no. 148).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Copies of the Report and Recommendation and the Order entered November 12, 2020 were returned as undeliverable with the notation that plaintiff has been discharged from TDCJ (docket entry no. 150). Plaintiff has yet to update the Court with a current address. No objections to the Report and Recommendation nor response to the Magistrate Judge's order have been filed to date.

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **PARTIALLY ADOPTED** to the extent it recommends dismissal. A Final Judgment will be entered accordingly.

SIGNED at Beaumont, Texas, this 30th day of November, 2020.

A handwritten signature in black ink, reading "Marcia A. Crone", is positioned above a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE